



Reasonable Efforts and Removal

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Taking Custody Without an Order

43-21-303(b) and Rule 12: Law enforcement or agent of the department of public welfare may take custody of child without a court order if:

- ▶ Probable Cause that the child is in immediate danger, *AND*
- ▶ Probable Cause that custody is necessary under 43-21-301 (b), *AND*
- ▶ No reasonable alternative to custody

What Does Necessary Mean

- ▶ 43-21-301(3)(b):

Endangered or Endangering

OR

To insure attendance at court

OR

Parent not able to provide for care and supervision

AND

No reasonable alternative to Custody

TAKING CUSTODY WITH AN ORDER

- ▶ 43-21-307 and Rule 11:
- ▶ Judge or Designee may authorize temporary custody no longer than 48 hours. Must follow 43-21-301.
- ▶ What's Required? Three things:
 1. Probable Cause that the child is within the jurisdiction of the youth court.
 2. Custody is deemed necessary (43-21-301(b))
 - Child is endangered or endangering; or
 - To Insure Child's appearance at court; or
 - Parent or Guardian not able to care for
 - AND
 3. There is no reasonable alternative to custody
- ▶ Order can be verbal or written. If verbal, must be reduced to writing as quickly as possible.



REASONABLE EFFORTS

- ▶ Trial judges have a legal responsibility to address the reasonable efforts
- ▶ federal and state statutes require these findings, which are necessary for the state agency to receive monies for foster care
- ▶ If attorneys fail to raise the issue, do judges have a responsibility to raise it?
- ▶ Some judges are reluctant and more comfortable in a “neutral role”
- ▶ Studies found unrepresented parents and unprepared or untrained attorneys are unlikely to raise the issue



What should a Judge consider?

- ▶ should understand the problem that brought the child to the attention of the agency
- ▶ Relevance of services provided or service agreement
- ▶ require the agency to prove that it made reasonable efforts
- ▶ whether the services offered were adequate, available, accessible, and realistic
- ▶ existence of a service that is not immediately available, or a service that is inaccessible to a parent without transportation arguably would not qualify as reasonable



Why does this matter

- ▶ Form orders
- ▶ Orders do not match the evidence presented
- ▶ A set up for TPR



Judicial Strategies

- ▶ Early attention to reasonable efforts means that critical issues will be addressed quickly and efficiently
- ▶ Children and families are in trauma as the result of social services and court intervention. The longer the process takes, the more extensive the trauma.
- ▶ judge should review the actions taken by the agency to prevent removal of the child including issues such as whether there have been changes that would permit the child safely to return home, whether another parent is available for custody, whether a relative is willing and able to care for the child, and whether the addition of services would make any of these alternatives possible.



No Reasonable Efforts Finding

- ▶ Money, Money, Money
- ▶ Many judges are reluctant to make a no reasonable efforts finding because it is directly tied to funding.
- ▶ Strategies – Court could state they are prepared to make a no reasonable efforts finding but will continue the matter for one week for a progress report. Why does this matter?
- ▶ It could mean that it lights a fire under the agency to actually help.
- ▶ Means faster results for things like relative placement, background checks, walk throughs.

Reasonable Efforts

- ▶ These attorneys must be prepared to address the “reasonable efforts” issue at every hearing.
- ▶ Judges must determine
 - ▶ (1) What was the danger that brought the child to the attention of the court? A well drafted petition and supporting documents should provide that information.
 - ▶ (2) What family problems are causing the danger?
 - ▶ (3) Has the agency identified the services that will best alleviate or reduce the danger to the child and permit the child safely to return home?
 - ▶ (4) Have caseworkers diligently arranged for those services?
 - ▶ (5) Are these services available to the family in a timely basis?
- ▶ the judge should ask whether circumstances have changed such that the child can return home, have additional and higher quality time with his or her parents, or can move to a relative home.
- ▶ These issues must be addressed throughout the life of a case, but, in particular, at the shelter care hearing and early in the case.